

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROQUETTE FRÈRES, S.A.,

Plaintiff and Counter-Defendant,

v.

SOLAZYME, INC.,

Defendant and Counterclaimant.

C.A. No. 14-1442-SLR

ROQUETTE FRÈRES, S.A.,

Plaintiff and Counter-Defendant,

v.

SOLAZYME, INC.,

Defendant and Counterclaimant.

C.A. No. 15-0125-SLR

**SOLAZYME, INC.'S ANSWER TO PLAINTIFF
ROQUETTE FRÈRES, S.A.'S COMPLAINT, PETITION TO CONFIRM
ARBITRATION AWARD, AND COUNTERCLAIMS**

OF COUNSEL:

Daralyn J. Durie
Josh H. Lerner
Laura E. Miller
Timothy C. Saulsbury
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111-3007
(415) 362-6666
ddurie@durietangri.com
jlerner@durietangri.com
lmiller@durietangri.com
tsaulsbury@durietangri.com

Frederick L Cottrell, III (#2555)
Chad M. Shandler (#3796)
Selena E. Molina (#5936)
RICHARDS, LAYTON & FINGER, PA
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
cottrell@rlf.com
shandler@rlf.com
molina@rlf.com

*Attorneys for Defendant and Counterclaimant
Solazyme, Inc.*

Dated: February 26, 2015

Defendant and Counterclaimant Solazyme, Inc. (“Solazyme”) hereby answers Plaintiff and Counter-Defendant Roquette Frères, S.A.’s (“Roquette”) February 3, 2015 Complaint for Declaratory Judgment filed in Case No. 15-00125-SLR (the “Complaint”). Unless specifically admitted, Solazyme denies each and every allegation made by Roquette in the Complaint and states as follows:

THE PARTIES

1. Solazyme admits that Roquette is a French corporation. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 1 of the Complaint and denies them on that basis.

2. Solazyme admits the allegations contained in Paragraph 2 of the Complaint.

NATURE OF THE ACTION

3. Solazyme admits that Roquette has brought the action identified in the Complaint. Solazyme denies the remaining allegations contained in Paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Solazyme admits that this Court has subject matter jurisdiction under 28 U.S.C. § 1332. Solazyme further admits that it is incorporated under the laws of Delaware with its principal place of business in California. Solazyme further admits that Roquette is a French corporation. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 4 of the Complaint and denies them on that basis.

5. Solazyme admits that this action may proceed in the present venue pursuant to 28 U.S.C. §§ 1391(b) and (c), without waiver of, or prejudice to, any future motion to transfer this action including pursuant to 28 U.S.C. § 1404(a).

6. Solazyme admits that Roquette seeks the relief identified in Paragraph 6 of the Complaint.

THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES

7. Solazyme admits that certain means to manufacture certain microalgae for consumption by humans and animals were known. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 7 of the Complaint and therefore denies them.

8. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8 of the Complaint and therefore denies them.

9. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9 of the Complaint and therefore denies them.

10. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10 of the Complaint and therefore denies them.

11. Solazyme denies the allegations contained in Paragraph 11 of the Complaint.

12. Solazyme admits that it had discussions with a number of companies, including ADM, regarding Solazyme's microalgal food ingredients. Solazyme denies the remaining allegations in Paragraph 12 of the Complaint.

13. Solazyme admits that, in 2009, it approached Roquette to discuss the potential of forming a joint venture and that, at the time, Solazyme had not received commitments from the potential business partners it had approached. Solazyme denies the remaining allegations in Paragraph 13 of the Complaint.

14. Solazyme admits the allegations contained in Paragraph 14 of the Complaint.

15. Solazyme admits that Solazyme and Roquette are Parties to a Joint Venture and Operating Agreement ("JVOA") dated November 3, 2010. Solazyme further admits that Roquette and Solazyme formed Solazyme Roquette Nutritionals, LLC ("SRN") for the purpose of, among other things, conducting research and development, manufacture, sales, and marketing

of microalgae-derived substances as ingredients for use in human foods, nutraceuticals, and animal feed. Solazyme admits that Solazyme and Roquette each owned 50% of the membership interests of SRN. Solazyme denies the remaining allegations in Paragraph 15 of the Complaint.

16. Solazyme admits that Article 22.3(b) of the JVOA states that “[a]ny dispute of a legal nature arising out of or connected with the interpretation or enforcement of the legal duties, rights and obligations under this Agreement” shall “be referred to and finally resolved by arbitration,” which “shall take place in New York, New York.” Solazyme denies the remaining allegations in Paragraph 16 of the Complaint.

17. Solazyme admits the allegations contained in Paragraph 17 of the Complaint.

18. Solazyme admits the allegations contained in Paragraph 18 of the Complaint.

19. Solazyme admits that the December 16, 2010 MTA (as defined in the Complaint) states that “Section 8 of the Manufacturing Agreement is incorporated herein by reference” and that Section 8 of the Manufacturing Agreement (as defined in the Complaint) contains a dispute resolution clause. Solazyme further admits that the dispute resolution clause of the Manufacturing Agreement states that any “dispute relating to this Agreement that cannot be resolved pursuant to Section 8.7(b)(i) shall be referred to and finally resolved by arbitration,” which “shall take place in San Francisco, California.” Solazyme denies the remaining allegations in Paragraph 19 of the Complaint.

20. Solazyme admits that the only section of the Manufacturing Agreement expressly incorporated by reference into the December 16, 2010 MTA is “Section 8.” Solazyme denies the remaining allegations in Paragraph 20 of the Complaint.

21. Solazyme admits that Section 8 of the MTA does not expressly call for the translation of foreign documents for arbitration proceedings. Solazyme denies the remaining allegations in Paragraph 21 of the Complaint.

22. Solazyme admits that, from December 2010 through June 2013, SRN operated for the purposes of attempting to commercialize certain microalgal food ingredients. Solazyme denies the remaining allegations contained in Paragraph 22 of the Complaint.

23. Solazyme admits that Roquette provided the primary financial resources to the joint venture and that, pursuant to the JVOA, Roquette agreed to make capital contributions. Solazyme denies the remaining allegations in Paragraph 23 of the Complaint.

24. Solazyme denies the allegations contained in Paragraph 24 of the Complaint.

25. Solazyme denies the allegations contained in Paragraph 25 of the Complaint.

26. Solazyme denies the allegations contained in Paragraph 26 of the Complaint.

27. Solazyme admits that Article 21.1(c) of the SRN JVOA states:

Upon the dissolution of the Company, the intangible assets of the Company . . . shall be treated as follows (capitalized terms used in this Section 21.1(c), but not defined in this Agreement, shall be as defined in the License Agreements):

(i) all Improvements to the Licensed Intellectual Property licensed to the Company by Solazyme, and any improvements, enhancements or refinements thereto made after the Accumulation Termination Date, shall be assigned by the Company to Solazyme;

(ii) all Improvements to the Licensed Intellectual Property licensed to the Company by Roquette, and any improvements, enhancements or refinements thereto made after the Accumulation Termination Date, shall be assigned by the Company to Roquette; and

(iii) all other intangible rights owned by the Company shall be assigned by the Company jointly to Roquette and Solazyme, each of which shall have the right to use, practice and license such Intellectual Property for any and all uses, without any accounting to the other.

Solazyme denies the remaining allegations in Paragraph 27 of the Complaint.

28. Solazyme admits that the term “Improvements” is defined in the Solazyme License Agreement as “any improvements, enhancements, modifications or refinements, patented or not, to the Licensed Intellectual Property that are reduced to practice or otherwise developed prior to the Accumulation Termination Date, by the applicable Party alone or in collaboration with one or more Third Parties, which are Controlled by the applicable Party.”

Solazyme denies the remaining allegations contained in Paragraph 28 of the Complaint.

29. Solazyme admits that it and Roquette disagreed with respect to the proper assignment of patent applications filed in the name of SRN, as well as know-how developed during the joint venture. Solazyme denies the remaining allegations in Paragraph 29 of the Complaint.

30. Solazyme admits that it contends that SRN is an “applicable Party” for purposes of Section 1.15 of the Solazyme License Agreement. Solazyme denies the remaining allegations in Paragraph 30 of the Complaint.

31. Solazyme admits that Roquette contended that SRN had not developed or invented any intellectual property “alone.” Solazyme denies the remaining allegations in Paragraph 31 of the Complaint.

32. Solazyme admits that Roquette and Solazyme submitted to arbitration under the Arbitration Rules of the Center for Public Resources under Article 22.3(b) of the JVOA.

33. Solazyme admits that Article 22.3(b) of the JVOA states, in part:

Within fifteen (15) days after the conclusion of the arbitration hearing, the arbitrators shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrations shall not be authorized to reform, modify or materially amend this Agreement or any other

agreements contemplated hereby.

To the extent that Roquette contends otherwise in Paragraph 33 of the Complaint, Solazyme denies the remaining allegations contained in Paragraph 33 on that basis.

34. Solazyme admits that the arbitral panel held evidentiary hearings in New York on September 25, 26, 29, 30, and October 1 and 2, 2014. Solazyme denies the remaining allegations in Paragraph 34 of the Complaint.

35. Solazyme denies the allegations contained in Paragraph 35 of the Complaint.

36. Solazyme admits the allegations contained in Paragraph 36 of the Complaint.

37. Solazyme admits the allegations contained in Paragraph 37 of the Complaint.

38. Solazyme admits the allegations contained in Paragraph 38 of the Complaint.

39. Solazyme admits that, on November 17, 2014, the arbitration panel (the "Panel") issued an order inviting the Parties to file motions for the production of further evidence and for additional hearings. To the extent that Roquette contends otherwise in Paragraph 39 of the Complaint, Solazyme denies the remaining allegations contained in Paragraph 39 on that basis.

40. Solazyme denies the allegations contained in Paragraph 40 of the Complaint.

41. Solazyme denies the allegations contained in Paragraph 41 of the Complaint.

42. Solazyme admits that, on November 28, 2014, Roquette filed a Complaint in this Court seeking a declaratory judgment that the authority of the arbitral Panel was terminated and alleging that the arbitrators' failure to deliver a timely award should render any subsequent award invalid and void. To the extent that Roquette contends otherwise in Paragraph 42 of the Complaint, Solazyme denies the remaining allegations contained in Paragraph 42 on that basis.

43. Solazyme admits that, in Roquette's November 28, 2014 Complaint, Roquette alleged prejudice on the basis of a threat of a legal action related to Roquette's activities to

manufacture and sell algal food ingredients in its own name subsequent to the dissolution of the joint venture. To the extent that Roquette contends otherwise in Paragraph 43 of the Complaint, Solazyme denies the remaining allegations contained in Paragraph 43 on that basis.

44. Solazyme admits the allegations contained in Paragraph 44 of the Complaint.

45. Solazyme admits that its December 1, 2014 motion stated that:

Solazyme cited the Material Transfer Agreement and Manufacturing Agreement because these agreements establish that Roquette's defense—that it had a “right” to conduct independent research using Solazyme and SRN's intellectual property and materials—is without merit. These agreements explicitly limit Roquette's use of Solazyme and SRN's intellectual property to the work it was doing on behalf of SRN. The JVOA directs that any intellectual property resulting from any research and development work on behalf of SRN is owned by SRN, and thus the panel has the jurisdiction and authority to resolve the ownership of Roquette's shadow patent applications and assign those applications to Solazyme.

Solazyme denies the remaining allegations in Paragraph 45 of the Complaint.

46. Solazyme denies the allegations contained in Paragraph 46 of the Complaint.

47. Solazyme denies the allegations contained in Paragraph 47 of the Complaint.

48. Solazyme admits that, on December 23, 2014, the arbitrators in the JVOA arbitration issued an order stating that their authority had not terminated and that they had jurisdiction “if Roquette filed patent applications based upon the intellectual property of Solazyme and were developed on behalf of the joint venture.” Solazyme further admits that the order directed Roquette to respond to additional discovery and directed the Parties to submit briefing regarding that discovery. Solazyme denies the remaining allegations contained in Paragraph 48.

49. Solazyme denies the allegations contained in Paragraph 49 of the Complaint.

50. Solazyme denies the allegations contained in Paragraph 50 of the Complaint.

51. Solazyme admits that its post hearing brief submitted to the Panel stated:

The fact that Roquette surreptitiously filed these patent applications in clear violation of its obligations under the Material Transfer Agreement does not remove them from the realm of contested SRN intellectual property at issue in this Arbitration.

Solazyme admits that Roquette contends that “Roquette and SRN, the other party to the MTA, never agreed to arbitrate claims arising from the MTA before the JVOA arbitral Panel.”

Solazyme denies the remaining allegations contained in Paragraph 51 of the Complaint.

52. Solazyme admits that the JVOA provides that Roquette and Solazyme shall mutually agree upon a single arbitrator or, in the absence of such agreement, the arbitration panel shall consist of a panel of three arbitrators, one to be selected by Roquette, one to be selected by Solazyme, and a third to be selected by mutual agreement of the first two arbitrators. Solazyme further admits that the dispute provisions incorporated by reference into the December 16, 2010 MTA state that Roquette and SRN shall mutually agree upon a single arbitrator or, in the absence of such agreement, the arbitration panel shall consist of a panel of three arbitrators, one to be selected by Roquette, one to be selected by SRN, and a third to be selected by mutual agreement of the first two arbitrators. Solazyme denies the remaining allegations contained in Paragraph 52 of the Complaint.

53. Solazyme admits the allegations contained in Paragraph 53 of the Complaint.

54. Solazyme denies the allegations contained in Paragraph 54 of the Complaint.

55. Solazyme admits that Article 10.2(a) of the JVOA states, in part, that “the Company (SRN) shall define and implement a research and development (R&D) program across all areas of activity necessary for the development of the Products and Business.” Solazyme further admits that it has relied upon Article 10.2 of the JVOA, in part, in its claim to SRN

ownership of the Roquette patent applications that arose through the JVOA. Solazyme denies the remaining allegations contained in Paragraph 55.

56. Solazyme admits the allegations contained in Paragraph 56 of the Complaint.

57. Solazyme admits the allegations contained in Paragraph 57 of the Complaint.

58. Solazyme denies the allegations contained in Paragraph 58 of the Complaint.

59. Solazyme denies the allegations contained in Paragraph 59 of the Complaint.

60. Solazyme admits the allegations contained in Paragraph 60 of the Complaint.

61. Solazyme admits the allegations contained in Paragraph 61 of the Complaint.

62. Solazyme lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 62 of the Complaint and denies them on that basis.

63. Solazyme admits that, in 2013, SRN, Roquette, and Solazyme did discuss work that had been performed by Solazyme and Roquette on behalf of SRN and that such work was, from time-to-time, agreed between the parties. Solazyme further admits that SRN, Roquette, and Solazyme discussed other financial issues in 2013. Solazyme denies the remaining allegations in Paragraph 63 of the Complaint.

64. Solazyme denies the allegations contained in Paragraph 64 of the Complaint.

65. Solazyme denies the allegations contained in Paragraph 65 of the Complaint.

66. Solazyme admits the allegations contained in Paragraph 66 of the Complaint.

67. Solazyme admits that Article 23.15 of the JVOA states:

The provisions of this Agreement shall be construed within the four corners of this Agreement; *provided, however*, that reasonable efforts shall be made to interpret and give full force and effect to the provisions of this Agreement in a manner that is not inconsistent with the interpretation given to the relevant provisions of the foregoing agreements and that gives full force and effect to

all relevant provisions of the foregoing agreements in their entirety.

Solazyme denies the remaining allegations contained in Paragraph 67 of the Complaint.

ROQUETTE’S PRAYER FOR RELIEF

68. Solazyme denies that Roquette is entitled to any relief in any form whatsoever from Solazyme and specifically denies that Roquette is entitled to any of the relief requested in the Prayer for Relief. Solazyme denies the allegations contained in the Prayer for Relief.

AFFIRMATIVE DEFENSES

69. Solazyme asserts defenses as set forth below. By pleading these defenses, Solazyme does not in any way agree or concede that Solazyme has the burden of proof or persuasion on any of these issues.

**FIRST DEFENSE
(Waiver)**

70. Roquette is barred from seeking the relief requested in the Complaint by reason of the doctrine of waiver.

**SECOND DEFENSE
(Estoppel)**

71. Roquette is barred from seeking the relief requested in the Complaint by reason of the doctrine of estoppel.

**THIRD DEFENSE
(Unclean Hands)**

72. Roquette is barred from seeking the relief requested in the Complaint by reason of the doctrine of unclean hands.

**SOLAZYME’S PETITION TO CONFIRM ARBITRATION AWARD AND
COUNTERCLAIMS (“PETITION AND COUNTERCLAIMS”)**

Solazyme, Inc. (“Solazyme”), by and through its attorneys, pursuant to Section 207 of the

Federal Arbitration Act, 9 U.S.C. § 207, brings this proceeding to confirm an award rendered, on February 19, 2015, by an Arbitral Panel (the “Panel”) selected by Solazyme and Roquette Frères, S.A.’s (“Roquette”) (collectively, the “Parties”) pursuant to the Parties’ November 3, 2010 Joint Venture and Operating Agreement (“JVOA”). Solazyme further asserts the following additional counterclaims against Roquette.

THE PARTIES

1. Solazyme is a Delaware corporation with its principal place of business in South San Francisco, California.

2. According to the allegations of the Complaint, Roquette is a French corporation with its principal place of business in Lestrem, France.

NATURE OF THE ACTION

3. Solazyme brings this Petition and Counterclaims to seek confirmation of the Panel’s Award and to halt Roquette’s willful misappropriation of Solazyme’s trade secrets and know-how relating to the high lipid algal flour and high protein algal powder products Solazyme contributed to the Parties’ joint venture, Solazyme Roquette Nutritionals, LLC.

JURISDICTION AND VENUE

4. This Court has diversity subject matter jurisdiction over these Counterclaims pursuant to, without limitation, 28 U.S.C. § 1332 because: (1) Solazyme is a Delaware corporation with its principal place of business in California; (2) according to the allegations of the Complaint, Roquette is a French corporation with its principal place of business in Lestrem, France; and (3) the amount in controversy without interest and costs exceeds the value required under 28 U.S.C. § 1332.

5. Roquette has consented to jurisdiction and venue in this District by filing its Complaint against Solazyme in this Court. Further, personal jurisdiction and venue are proper in this Court under 28 U.S.C. §§ 1391(b) and (c).

FACTUAL BACKGROUND

6. Solazyme is a South San Francisco biotechnology company that develops products from microalgae, including biofuels, food ingredients, and cosmetics.

7. In nature, microalgae are typically green, high in chlorophyll, and have a strong taste that many people find unappealing. Solazyme grows microalgae using a fermentation process that takes place in the dark, resulting in a product with very low levels of chlorophyll that is yellow rather than green.

8. In studying the profile of the oil produced under these conditions by one particular type of microalgae, Solazyme discovered that it was similar to olive oil and was neutral-tasting, and had other interesting properties. From these insights, Solazyme developed two new food ingredients: (1) a neutral tasting, yellow “algal flour” that is high in fat and can be used as a replacement for eggs, oil, and butter in products like baked goods, salad dressings, and ice cream, resulting in finished food products that are lower in fat and calories but with the taste and texture of full-fat products; and (2) a neutral tasting, yellow high protein algal powder that can be used to improve the nutritional profile of a variety of products.

9. Solazyme developed a process for making these new products using fermentation followed (in the case of the high lipid product) by disrupting the cell walls to release the oil and spray drying the resulting biomass to create a powder that can easily be incorporated into finished food products. Solazyme also developed recipes showcasing the potential of these new ingredients in various foods.

10. Around the end of 2008, Solazyme began looking for a partner with whom it could commercialize these new food ingredients. In January 2009, Solazyme reached out to Roquette as a potential commercialization partner.

11. Roquette is a family-owned French company that principally processes high-starch products such as corn and peas, and manufactures starch-based derivatives. Roquette has manufacturing facilities around the world, including in the United States.

12. As of 2009, Roquette had interests in two businesses that grew microalgae as potential nutritional supplements. The first was a facility in Wuhan, China, which used microalgae to produce DHA, an Omega-3 fatty acid that is added to infant formula and is believed to be important in the development of the central nervous system. DHA is not used as a substitute for fat in finished food products and heating it often causes it to have a strong, unattractive fishy taste. The second facility is located in Klotze, Germany. It had large photo-reactors that are used to produce green algae, principally for use as a nutritional supplement.

13. Roquette commissioned taste tests at the Paul Bocuse Institute using its green microalgae in various foods, including cakes, cookies, and ice cream. The tasters rejected a number of the products as tasting of fish or undergrowth (with a number of variations on that theme). The ice cream elicited a particularly unfavorable reaction due to the unexpected combination of a green color and a taste of seafood.

14. Prior to disclosing any of its intellectual property to Roquette, Solazyme required that the parties enter into a Confidentiality Agreement governing the discussions related to a possible business venture, which the parties executed on March 16, 2009. The Confidentiality Agreement, effective as of February 6, 2009, expressly prohibited Roquette from using Solazyme's confidential information for development, experimentation, optimization, or patent

applications, and required that Roquette limit the use of and access to Solazyme's confidential information to those employees who had a real need to know of it for the purpose of the parties' business discussions.

15. Following an initial phase of the negotiations, the Parties executed a Material Transfer Agreement in July 2009 under which Solazyme agreed to furnish Roquette for evaluation and testing certain proprietary materials Solazyme had developed—the products and processes that Solazyme ultimately contributed to the Parties' joint venture, including its high-lipid algal flour and high-protein algal powder. The 2009 Material Transfer Agreement incorporated the terms of the February 2009 Confidentiality Agreement, and extended its term. Section 3.1 of the Material Transfer Agreement stated:

Roquette covenants and agrees not to reverse-engineer, reproduce, or otherwise attempt to identify the source of the Material provided by Solazyme under this Agreement through chemical, genetic, or other analysis.

16. Unbeknownst to Solazyme until after the joint venture fell apart, immediately upon receipt of Solazyme's proprietary materials under the terms of the 2009 Material Transfer Agreement, Roquette began to reverse-engineer, reproduce, and attempt to identify the source of Solazyme's products. Roquette conducted internal tests of Solazyme's material to identify the microalgal species Solazyme used to make its proprietary material, as well as experimenting with certain downstream processes in an attempt to replicate the properties of the final product.

17. On November 3, 2010, following extensive negotiations, Parties entered into the JVOA. Pursuant to the JVOA, the Parties formed a joint venture called Solazyme Roquette Nutritionals, LLC ("SRN").

18. Solazyme's primary contribution to SRN was its intellectual property, including its patent applications and know-how. Solazyme contributed its high lipid algal flour and high

protein algal powder products and the processes for making them. Solazyme also gave the joint venture a license to 69 patent applications covering its process for making these two algal products and background technology. Solazyme further contributed to SRN samples of its products and the algae strain used to make them.

19. Solazyme also prepared detailed documents laying out the process parameters for making the products and met with Roquette to teach its personnel how to make the Solazyme products.

20. From the outset, Roquette's personnel expressed excitement about working in the joint venture with Solazyme's "new technology." On the eve of the joint venture, an internal Roquette email dated November 2, 2010, directed to its chief negotiator of the joint venture stated: "This partner provides us with technology we do not have under heterotrophic conditions."

21. Roquette did not make a comparable intellectual property contribution to SRN. Instead, Roquette's primary contributions were financial. In all, Roquette offered just three families of patent applications. One was a candy incorporating green micro algae to prevent tooth decay. The second taught the addition of fiber to food products to disrupt the cell walls in the gut. The third was a re-greening process after producing heterotrophic microalgae and then regreening it to obtain a green algae rich in chlorophyll. Ultimately, SRN determined not to use these patents applications, a decision based in part upon the recommendation of Roquette personnel and approved by the representatives of the Parties at an SRN meeting.

22. During the course of the joint venture, the most difficult task was transfer of Solazyme's intellectual property and technology to Roquette, who was to carry out

manufacturing on behalf of SRN. Despite several challenges, the transfer ultimately was deemed “successful” by Roquette.

23. Despite this success, Roquette decided to terminate the joint venture. Solazyme wanted to continue the joint venture, but Roquette refused and ceased funding SRN.

24. Roquette at this time did not disclose that it retained its strong interest and belief that the products Solazyme had contributed to SRN were valuable. Thanks in part to its access to Solazyme’s intellectual property and know-how, Roquette now knew how to make the products in question.

25. An internal Roquette presentation of January 3, 2013, stated: “Significant progress has been accomplished to master the technology and Roquette has acquired know-how.”

26. This led Roquette to seek dissolution of SRN and to seek control over the products and related intellectual property produced by SRN. After a debate over the dissolution of SRN, the Parties ultimately stipulated that the joint venture was dissolved.

27. When it became clear to the Parties that SRN was to dissolve, a dispute arose as to the proper assignment of SRN’s intellectual property. Pursuant to the JVOA, the Parties submitted to arbitration to resolve the dispute.

28. The parties served simultaneous arbitration demands on September 24, 2013. Roquette demanded an arbitral award that it was a joint owner of SRN’s intellectual property and that said intellectual property should be jointly assigned to Roquette and Solazyme. Solazyme demanded an arbitral award that it was the sole owner of SRN’s intellectual property because all of SRN’s intellectual property improved upon the intellectual property Solazyme contributed to SRN and, thus, was to be assigned to Solazyme pursuant to the dissolution clause of the JVOA.

29. Pursuant to Article 22.3(b) of the JVOA, the arbitration was conducted according to the laws of the State of Delaware.

30. During the course of the arbitration, Solazyme learned that, during SRN's life, Roquette had surreptitiously, and without notice to Solazyme, filed multiple patent applications in its own name based on patent applications filed by SRN.

31. For instance, on October 17, 2012, SRN filed U.S. Provisional Patent Application (61/715,031) relating to material dried using a Filtermat listing Roquette and Solazyme personnel as inventors. On October 26, 2012, nine days later, Roquette secretly filed a European Patent Application (EP2724625) claiming virtually identical subject matter as the earlier SRN Patent Application but deleting the Solazyme employees as inventors. Solazyme first learned of this filing after the application was published on April 30, 2014.

32. As another example, on March 15, 2013, SRN filed U.S. Provisional Patent Application (61/793,334). On the same date, Roquette filed European Application (EP277-400), which was essentially the same as the application filed by SRN, again deleting the Solazyme inventors. This application was published on September 17, 2014.

33. Bruno Quenon, Roquette's head of intellectual property, was aware that Roquette was not the owner of the patent application directed to spray drying with Filtermat-type technology. Indeed, in an email dated July 2, 2011, he acknowledged:

Regarding the ownership of the proposed patent application, if I am not mistaken the license and/or JV Agreement foresees that such patent application will be held by SRN. I will try to take the time to check the applicable relevant agreements.

34. Even to this day, Solazyme continues to learn of new shadow applications filed by Roquette as they publish. Indeed, just this month, two additional Roquette patent applications

relating to Solazyme's high lipid algal flour (WO2015022469(A2)) and high protein algal powder (WO2015019023(A1)) have published.

35. In connection with the arbitration proceedings, the Parties submitted multiple rounds of briefing and presented evidence and witnesses during a six-day evidentiary hearing in New York before the Panel, which consisted of Judge Charles B. Renfrew, Judge Paul R. Michel, and Professor Eric D. Green. After further submissions, the Panel issued an order on February 10, 2015, closing the hearing.

36. On February 19, 2015, the Panel rendered its award (the "Award"), finding, *inter alia*, that Solazyme was entitled to be assigned: (1) all of the patent applications currently assigned to SRN; (2) all of SRN's know-how relating to the two products Solazyme contributed to SRN and the processes for making said products; and (3) all Roquette patent applications filed on or after November 3, 2010 relating to microalgal foods, microalgal food ingredients, and microalgal nutritionals, as well as all methods relating to making and using the same. The Award is attached hereto as Exhibit A. Based on the extensive evidentiary record before it, and Roquette's failure to provide any plausible legitimate basis for its filings, the Panel found that "Roquette is presently attempting to patent intellectual property in its own name and marketing products that are based upon intellectual property and products that Solazyme contributed to the Joint Venture: a high lipid algal flour and a high protein algal powder." Ex. A at 30. The Panel further found that "Roquette did not possess" these "products . . . prior to the JVOA." Ex. A at 19.

37. In its marketing, Roquette claims that it "found a new process" to make these two products. But, in reality, Roquette did no more than misappropriate Solazyme's intellectual property and know-how and pass that off as its own.

38. Roquette's marketing efforts, using the products developed by Solazyme, appear to be successful. Shortly after SRN's dissolution, Roquette won two awards for innovation at the Food Ingredient Europe Awards Ceremony in November 2013, for two products, one a high lipid algal flour and the other for a high protein algal powder. The award for the high lipid algal flour stated:

Thanks to Roquette's High Lipid Algal Flour it is now possible to make a brioche without eggs, butter or allergens and with 70% less fat, yet with gustatory qualities similar or even better than those of a conventional brioche! And Roquette proved it with a new approach based on a previously unexplored raw material. Named the most innovative ingredient of the year by the members of the jury of the FIE Innovation Awards 2013. The innovation is a whole algal flour rich in lipids.

39. The packaging nutritional disclosure panels of the award-winning Roquette product show a reduction of fat content, reduced calories, addition of fiber, and elimination of chlorophyll.

40. The awards given to Roquette were for products that Solazyme introduced to it. Roquette did not develop either product for which it received an award on its own. Indeed, based on an extensive evidentiary record, the arbitration Panel confirmed that "Roquette did not previously possess any products which were in any way similar to" the "high lipid algal flour" and "high protein algal powder" contributed "by Solazyme" to SRN. Ex. A at 30-31.

COUNT I – CONFIRMATION OF THE PANEL'S AWARD

41. Solazyme restates and incorporates by reference the foregoing allegations contained in its Petition and Counterclaims.

42. On February 19, 2015, the Panel issued its Award, signed by all arbitrators.

43. The Award found and ordered that "Solazyme has satisfied its burden of proof on its cause of action seeking a declaration that Solazyme is entitled to be assigned all of the

improvements SRN made to Solazyme's intellectual property," including: (1) "[a]ll of the patent applications currently assigned to SRN"; (2) "[a]ll of SRN's know-how related to the production of the SRN products, including all know-how related to the production of whole cell microalgal products" having properties specified in the award; and (3) "[a]ll Roquette patent applications filed on or after November 3, 2010 relating to microalgal foods, microalgal food ingredients, and microalgal nutritionals, as well as all methods relating to making and using the same, including but not limited to" patents specifically identified in exhibits to the Award. Ex. A at 33-35.

44. The Panel further ordered as follows:

1. SRN shall execute all documents and perform all acts to assign to Solazyme all of the SRN patent applications and assist Solazyme in prosecuting, obtaining, registering, and maintaining, at Solazyme's expense, all patents and any foreign equivalents thereof in any and all countries as may be determined by Solazyme. For example, authorized representatives of Roquette and each Roquette employee who is listed as an inventor on any of SRN's patent applications shall cooperate with Solazyme to execute an assignment and declaration in the form of the template attached to this Order as Exhibit A and any necessary powers of attorney for each of the relevant patent applications within one month of this Order, permitting Solazyme to effectuate assignments for each of the pending patent applications.

2. SRN's know-how related to [specified] SRN products . . . are assigned to Solazyme.

3. Roquette shall identify to Solazyme within five days of this order all currently pending patent applications filed by it on or after November 3, 2010 relating to microalgal foods, microalgal food ingredients, and microalgal nutritionals, as well as all methods relating to making and using the same.

4. Roquette shall refrain from any actions or inactions that would damage the patent filings identified in paragraph 3.

5. Roquette shall inform Solazyme within five days of this order of any deadlines within the three months after this order in the prosecution of any of the patent applications identified in paragraph 3.

6. Roquette shall execute all documents and perform all acts to assign to Solazyme all of the patent applications identified in paragraph 3 and assist Solazyme in prosecuting, obtaining, registering, and maintaining, at Solazyme's expense, all patents and any foreign equivalents thereof in any and all countries as may be determined by Solazyme. For example, authorized representatives of Roquette and each Roquette employee who is listed as an inventor on any of the relevant patent applications shall cooperate with Solazyme to execute an assignment and declaration in the form attached to this Order as Exhibit A and any necessary powers of attorney for each of the relevant patent applications within one month of this order, permitting Solazyme to effectuate assignments for each of the pending patent applications.

7. Solazyme is hereby awarded its fees and costs related to this arbitration in the amount of \$2,331,803.

8. Solazyme is hereby awarded an additional \$13,875 in fees related to Roquette's failure to comply with the Panel's December 23, 2014 Discovery Order.

9. This Award is in full settlement of all claims submitted to the Panel. All claims, not specifically granted or denied, are denied.

10. This Award may be enforced in any Court of competent jurisdiction.

Ex. A at 35-37.

45. The Award represents a complete and final determination of all claims submitted by the Parties to the Panel.

46. Article 22 of the JVOA expressly provides that the Parties "waive any right to appeal the arbitration award."

47. Less than three years has expired since the date of delivery of the Award by the Panel to the Parties, and the Award has not been vacated or modified.

48. Among the orders in the Award is a requirement that "Roquette [] inform Solazyme within five days of [the Panel's February 19, 2015] order of any deadlines within the

three months after this order in the prosecution of any of the patent applications identified in paragraph 3 [of the Panel’s Order].” The Award further requires that Roquette “identify to Solazyme within five days of [the] order all currently pending patent applications filed by it on or after November 3, 2010 relating to microalgal foods, microalgal food ingredients, and microalgal nutritionals, as well as all methods relating to making and using the same” and “refrain from any actions or inactions that would damage [those] patent filings.” Both of these five-day deadlines expire no later than February 26, 2015—five business days from issuance of the Award. Should Roquette fail to comply with these deadlines, Solazyme will face substantial prejudice, including, without limitation, the potential that Roquette sabotages the patent applications and thereby substantially diminishes (or eliminates) their value. As documented in the Panel’s Award, Roquette has already demonstrated a willingness to purposefully and surreptitiously manipulate patent application filings to the detriment of Solazyme and SRN.

COUNT II – TRADE SECRET MISAPPROPRIATION

49. Solazyme restates and incorporates by reference the foregoing allegations contained in its Petition and Counterclaims.

50. Solazyme owns trade secrets relating to the high lipid algal flour and high protein powder products it contributed to SRN and the processes for making those products. This includes, but is not limited to, the know-how Solazyme contributed to SRN and the SRN know-how that the Panel awarded to Solazyme.

51. The know-how and other trade secrets relating to these processes were secret and Solazyme took reasonable efforts to maintain their secrecy.

52. Solazyme’s trade secrets had and continue to have actual and potential independent economic value from not being generally known to the public, as demonstrated by,

inter alia: (1) Roquette's agreement to contribute financing to SRN in exchange for Solazyme's intellectual property contributions; and (2) the awards referenced above in Paragraph 44 of this Petition and Counterclaims. As such, they were valuable to Solazyme and to Roquette when Roquette misappropriated them.

53. Solazyme expended substantial resources to develop its trade secrets.

54. Solazyme's trade secrets were not, and are not, easily acquired or duplicated by others.

55. Roquette improperly misappropriated Solazyme's trade secrets, including by using Solazyme's trade secrets outside of SRN to manufacture and market a high lipid algal flour and a high lipid algal powder. This misappropriation of Solazyme's trade secrets was done in breach of Roquette's duties to maintain secrecy and without the express or implied consent of Solazyme.

56. Roquette's actions constitute unlawful acquisition, misappropriation, and/or use of Solazyme's trade secrets.

57. As a result of Roquette's misappropriation, Solazyme has been harmed and has suffered damages.

58. Roquette's actions described above have been willful and/or knowing.

59. Roquette's misappropriation of Solazyme's trade secrets was a substantial factor in causing Solazyme's harm.

60. As a direct and proximate result of Roquette's actions alleged above, Solazyme has no adequate legal remedy and has been irreparably injured.

61. Solazyme seeks disgorgement of Roquette's unjust enrichment obtained through the misappropriation of its trade secrets, damages to Solazyme's business, and/or other damages as provided by law.

COUNT III – BREACH OF CONTRACT

62. Solazyme restates and incorporates by reference the foregoing allegations contained in its Petition and Counterclaims.

63. Solazyme and Roquette entered into the Confidentiality Agreement, effective on February 6, 2009. Pursuant to this agreement, Roquette agreed to use any information disclosed by Solazyme solely for the purpose of advancing the business discussions between the parties and agreed that it was expressly prohibited from using Solazyme's confidential information for development, experimentation, optimization, or patent applications.

64. Solazyme and Roquette entered into a Material Transfer Agreement, effective on July 14, 2009. Pursuant to this agreement, Roquette agreed not to reverse-engineer, reproduce, or otherwise attempt to identify the source of the proprietary material provided by Solazyme through chemical, genetic, or other analysis.

65. Solazyme has performed all conditions, covenants, and promises required on its part to be performed in accordance with the 2009 Confidentiality Agreement and 2009 Material Transfer Agreement.

66. Roquette has breached the 2009 Confidentiality Agreement, including but not limited to Paragraphs 2 and 3, by among other things, disclosing Solazyme's proprietary information to Roquette employees without a real need to know it for the purposes of the parties' joint venture discussions, and using Solazyme's proprietary information for purposes other than the parties' joint venture discussions, including development, experimentation, and optimization.

67. Roquette has breached the 2009 Material Transfer Agreement, including but not limited to Sections 2 and 3, by among other things, attempting to reverse-engineer, reproduce, and otherwise identify the source of the proprietary material provided by Solazyme under the agreement.

68. As a result of Roquette's breach of the 2009 Confidentiality Agreement and 2009 Material Transfer Agreement, Roquette has caused damage to Solazyme in an amount to be proven at trial. Solazyme has also suffered irreparable injury, and will continue to suffer irreparable injury, for which Solazyme has no adequate remedy at law, entitling Solazyme to injunctive relief.

SOLAZYME'S PRAYER FOR RELIEF

Solazyme respectfully requests the following relief:

- a. An order, pursuant to 9 U.S.C. § 207, confirming the Panel's February 19, 2015 Award;
- b. An order directing Roquette to comply forthwith with the orders and terms set forth in the Panel's February 19, 2015 Award, including each of the Panel's orders set forth above in Paragraph 44;
- c. A judgment in Solazyme's favor in the amount of the attorneys' fees and costs awarded by the Panel (\$2,345,678) and further interest that accrues until payment;
- d. Compensatory damages according to proof;
- e. Restitution and disgorgement;
- f. Punitive damages;
- g. Interest to the extent permitted by law;
- h. Preliminary and permanent injunctive relief (i) to protect Solazyme's trade

secrets and confidential information against further misappropriation and disclosure by Roquette and (ii) barring Roquette from marketing, selling, and/or importing its high lipid algal flour and high protein algal powder products;

- i. A judgment that Roquette recover nothing by its Complaint;
- j. A judgment that Roquette's Complaint be dismissed with prejudice and

that each request for relief therein be denied;

- k. An award of attorneys' fees, costs, and expenses in this Action; and
- l. Such other and further relief as the Court deems proper.

OF COUNSEL:

Daralyn J. Durie
Joshua H. Lerner
Laura E. Miller
Timothy C. Saulsbury
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111-3007
(415) 362-6666
ddurie@durietangri.com
jlerner@durietangri.com
lmiller@durietangri.com
tsaulsbury@durietangri.com

/s/ Frederick L. Cottrell, III

Frederick L Cottrell, III (#2555)
Chad M. Shandler (#3796)
Selena E. Molina (#5936)
RICHARDS, LAYTON & FINGER, PA
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
cottrell@rlf.com
shandler@rlf.com
molina@rlf.com

*Attorneys for Defendant and Counterclaimant
Solazyme, Inc.*

Dated: February 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2015, true and correct copies of the foregoing were caused to be served on counsel of record at the following addresses as indicated:

BY EMAIL

Kenneth J. Nachbar
Brendan W. Sullivan
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
knachbar@mnat.com
bsullivan@mnat.com

Douglas V. Rigler
Jeffrey M. Goehring
YOUNG & THOMPSON
209 Madison Street, Ste. 500
Alexandria, VA 22314
703 521-2297
drigler@young-thompson.com
jgoehring@young-thompson.com

*Attorneys for Plaintiff and Counter-Defendant
ROQUETTE FRÈRES, S.A.*

/s/ Selena E. Molina

Selena E. Molina (#5936)